

LEGAL EASE



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Facts, myths of homeownership

President Bush, in addition to his recent trip to Pennsylvania, visited the Keystone State last spring as part of his re-election campaign. In Ardmore, he talked to the residents about the American dream of owning a home. For many older Americans that dream is becoming a nightmare, as they face a future that may include long term care in a nursing home. The house is often the biggest, and sometimes the only, asset that an individual has to pass on to the next generation. A question frequently arises: should Mom and Dad attempt to protect that asset? Myths abound concerning the need (and wisdom) of "putting the house in my son's (or daughter's, or grandchild's) name now, so the government won't get it." It is time to debunk some of the myths, and examine the ramifications of such an action.

In Pennsylvania, a husband and wife who own a home that is titled in both of their names, own the property as tenants by the entireties. This offers protection of the home from creditors of one spouse or the other. When one of the spouses dies, the other spouse owns it entirely. If one spouse enters a nursing home, and applies for Medical Assistance benefits, the house is "protected" for the spouse who stays home (i.e. "community spouse") and not counted as an asset. If the first spouse dies, and the community spouse later enters a nursing home, and applies for Medical Assistance (and has no long term care insurance), there is a lien placed against the house to reimburse the State for the cost of the Medical Assistance funds spent. So there is a legitimate concern about the loss of the assets in this case. However, adequate planning, far enough in advance of the need for long term care, can sometimes prevent the loss of the house for your heirs.

On the other hand, not everyone will require nursing home care. Retirement Communities and Assisted Living Facilities must be paid for privately, often from the proceeds of the sale of the family home. In this way, seniors can maintain a level of independence and dignity which is funded by their own hard-earned money. Other points to consider are the transfer of the owner's basis and the loss of the step-up in basis that occurs when property is transferred in a Will. For example, if you and your spouse bought the house for \$20,000 and it is worth \$120,000 now, a transfer during your lifetime would mean that the person to whom you transferred it, for instance, your son, assumes your \$20,000 basis. If and when he sells the house, he would need to pay capital gains tax on the difference between the basis of \$20,000 and the selling price of \$120,000. If you sold the house as your principal residence, it is unlikely that you would pay any capital gains tax. Additionally, if you required nursing home care within 3 years of the transfer, you would be ineligible for Medical Assistance for some period of time (on the above facts, it would be approximately 21 months) because you transferred property without having been paid for it, or, in other words, made a gift of your home. Another point to consider is the loss of control. You no longer own your home, and need your child's permission to sell it if that is what you later decide to do. Your child could evict you, or could predecease you, in which case the house could be owned by your son-in-law or daughter-in-law.

Of course, everyone's situation is unique, and requires individual consideration. A qualified elder law attorney can help you see the pros and cons of transferring title to your home to protect it from "the government taking it."